

OD-9

ORDER SHEET

WPO/58/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BIKAS CHAND DUBEY
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 6th February, 2024

Appearance:

Mr. Anjan Bhattacharya, Adv.

Ms. Anita Shaw, Adv.

..for the petitioner

Mr. Bhaskar Prasad Vaisya, Ld. AGP

Mr. Gourav Das, Adv.

The Court:- The writ petitioner is aggrieved with a reasoned order passed by the District Inspector of Schools, Secondary Education, Kolkata dated 12.10.2020, pursuant to the direction of this Court in WP/18/2020 vide order dated 28.02.2020.

The issue involved in the said impugned reasoned order of the authority as well as the present writ petition is with regard to the purported rejection of the prayer of the writ petitioner for grant of approval to his service, by the competent authority.

Mr. Bhattacharya appears for the writ petitioner. He has submitted that the writ petitioner has been appointed at Shree Jain Vidyalaya on contractual basis against a sanctioned vacant post, with effect from

29.10.2008. Since then, he says that the writ petitioner has been serving continuously and uninterruptedly in the said school. Accordingly, the school authorities had made him permanent in place of a retired permanent teacher, namely, Shri Amar Nath Dubey. The school authority consequently has sent the proposal for approval of service of the writ petitioner by dint of its letter dated 14.05.2018, to the District Inspector of Schools, Secondary Education, Kolkata.

However, receiving no response from the said respondent, this Court was moved by dint of the writ petition as mentioned above, when the Court had directed for necessary consideration to be made by the concerned respondent, of the recommendation of the school authority as regards approval of the writ petitioner. The impugned order dated 12.10.2020 is the result of such consideration by the concerned respondent, that is, District Inspector of Schools, Secondary Education, Kolkata.

In the said impugned order dated 12.10.2020, the District Inspector of Schools, Secondary Education, Kolkata has put forth two-fold reasons for rejecting the petitioner's prayer. Firstly, that the sanctioned strength of the teachers in the Higher Secondary Section of the said school is already filled up and secondly, that the area of specialisation of the writ petitioner would not allow him to be accommodated at the normal section of the said school, he being a teacher of Commerce stream, which curriculum is available only in the Higher Secondary section of the said institution.

Mr. Bhattacharya has indicated some changes in the facts and circumstances of this case during pendency of this writ petition. By referring

to the staff pattern of the approved teachers and staff of the school, he has indicated that one of the assistant teachers with the qualification of M.Com and B.Ed (similar as the present writ petitioner) has retired from service, post the issuance of the impugned order on 30.06.2022. He submits that this change of fact can be taken into account by the concerned authority to reconsider his client's prayer.

Learned advocate appearing on behalf of the respondent State has submitted that as on the date of passing of the impugned order, the posts of the Commerce Section of the school were filled up. As such, the authority had no occasion to accord approval to the writ petitioner as prayed for. He has supported the impugned order. However, as regards the prayer of the writ petitioner regarding reconsideration on the ground of change in the facts and circumstances during pendency of the present writ petition, as indicated by Mr. Bhattacharya, he rests the same at the discretion of the Court.

From the record and the submissions of the learned advocates for the respective parties, it appears that the writ petitioner has been in service in school since 2008, on contractual basis. His service record has been unblemished till now and his qualification is also commensurate with that of a teacher whose service can be approved upon being recommended for the same by the school authorities.

Under such circumstances, there should not be any legal and procedural impediment for the petitioner to be approved as against a sanctioned vacant post in the Commerce Section of the said school.

However, in view of the impugned order, it appears that at the said point of time, the sanctioned posts in the Commerce Section of the school were filled up. The situation has changed after retirement of one of the permanent assistant teachers, namely, Laxmi Singh, during pendency of the present writ petition. It is, therefore, found proper that the concerned respondent authority, that is, the District Inspector of Schools, Secondary Education, Kolkata be directed to consider again the recommendation of the school for approval of the writ petitioner, taking into reckoning the subsequent change in the facts and circumstances of the case, which arose pursuant to retirement of said Mr. Laxmi Singh, during pendency of the present writ petition. In doing so, the said respondent authority shall afford opportunity of hearing to the writ petitioner and allow him to produce necessary documents, if any, before the said authority. The authority may also hear any other person as it would find necessary, for the purpose.

Hence, the impugned order dated 12.10.2020 is set aside and the concerned respondent is directed, as above.

The authority shall also consider the issue regarding grant of notional benefit to the writ petitioner in the light of the attending facts and circumstances.

The entire exercise as above shall be concluded by the said respondent that is the District Inspector of Schools, Secondary Education, Kolkata, within a period of four weeks from the date of communication of this order to its office.

With the observations and directions as above, the writ petition is disposed of.

(RAI CHATTOPADHYAY, J.)

bp.